Justice of the Peace
and
LOCAL
GOVERNMENT REVIEW
ESTABLISHED 1837

[Registered at the General Post Office as a Newspaper]
LONDON:
SATURDAY, OCTOBER 13, 1956
Vol. CXX. No. 41 Pages 640–654
Offices: LITTLE LONDON, CHICHESTER, SUSSEX
Chichester 3637 (Private Branch Exchange).
Showroom and Advertising: 11 & 12 Bell Yard, Temple Bar, W.C.2.
Holborn 6900.
Price 2*s.* 3*d.* (including Reports), 1*s.* 3*d.* (without Reports).

CONTENTS

REPORTS

NOTES OF THE WEEK

The Magistrates' Association

The thirty-sixth annual report of the Magistrates' Association notes the adoption of a new constitution which was approved at the 1955 annual general meeting. The council is now chosen on a purely territorial basis, representation being based on the number of members in each of the electoral divisions into which England and Wales have been divided. It was hoped in this way to meet the criticism often expressed that the policy of the association was directed too closely from London and that country members were not adequately consulted.

Under the new constitution, bench membership is discontinued. The formation of branches of the association is to be encouraged, it being felt that the larger unit of the branch could undertake more activities and exercise a wider influence than single benches could do, and that the soundest principle would be that of individual members, grouped eventually into branches covering the whole country. Already a number of branches have been or are being formed.

The cordial relationship and close co-operation between the association and the Lord Chancellor's department and the Home Office have continued, and the report states that the Lord Chancellor's department is now sending to new justices on their appointment a copy of the associations' handbook *Notes for new Magistrates*. We think this should be an encouragement to new magistrates' further study of the law they are called upon to administer. They will find it all the easier to consult works of reference, such as the indispensable *Stone*, after reading such notes by way of an introduction to what might appear at first a subject beyond the understanding of laymen.

Membership has continued to increase, but the association is not yet completely satisfied. At present it represents just under two-thirds of the active magistrates in England and Wales.

The report contains some particulars of the many subjects that have been discussed by the association and its various committees from which it appears that the association is active and vigilant and that it is able to exercise considerable influence in connexion with the many-sided work of magistrates. Separate reports of the individual committees are appended, together with reports from the branches

Interesting appendices include a list of meetings and conferences held during 1955–1956, a report on the remuneration of prisoners, and a memorandum on possible alternatives to short sentences of imprisonment which was submitted to the Home Secretary's Advisory Council on the treatment of offenders.

Probation Hostels

Approved homes and hostels are a valuable feature in the probation system, and a requirement to reside in one of them is often included in a probation order. Magistrates like to know what kind of a place they are requiring a probationer to live in, and they find it useful to see some homes and hostels for themselves.

Those who manage homes and hostels, and probation officers who make frequent visits to them know how important it is that care should be taken to avoid sending to them probationers who are quite unsuitable for one reason or another, and who are likely to spoil the atmosphere and upset the discipline of the institution. It is therefore worthwhile for magistrates to consider what makes for success or failure in the selection of cases.

We are glad to publish a booklet entitled *Home Office Approved Probation Hostels*, which has been written by Mr. R. A. F. Cooks of the Kent Probation Service. Mr. and Mrs. Cooks were for five years the warden and matron of a hostel in Leicester, and Mr. Cooks has now set down a brief history of the probation legislation, and thereafter has undertaken a survey of the first 106 boys who have passed through this hostel. Under various headings the factor that may contribute to success or failure, which should be taken into consideration, before a decision is made to send or not to send a boy to a hostel, are examined, and some statistics are furnished. Thus, a court may wonder whether a boy with

previous convictions or a boy who has been to a detention centre or an approved school, or a boy with some sexual difficulties is suitable for a hostel. This pamphlet supplies information based on practical experience and close observation.

In a foreword, Mr. Gilbert J. Paull, Q.C., the recorder of Leicester, recommends this little book as containing, " the real pith of all that one requires to know, either when deciding whether a lad should go into a hostel or when considering how and to what extent control should be exercised, or indeed when considering what alterations are desirable in the hostel system." He adds that it should be a real help to those whose tasks and whose interests bring them into touch with delinquency.

The price of the booklet is 3*s.* 6*d.*

Effect of Plea on Sentence

How far a plea of guilty may be a mitigating factor in relation to sentence must depend in part on the motive behind the plea. There is no particular virtue about pleading guilty when there is not the slightest chance of avoiding conviction, but it may be good policy to admit an offence rather than go into the witness-box and give false evidence, which makes the court feel that the offender is not entitled to leniency. He is not truthful, and as he has denied his offence he is not in a position to express regret.

In the case of sexual offenders, it is not unknown for the offender, obviously overwhelmed by shame, to plead guilty, anxious to spare a child victim the ordeal of giving evidence. Most courts would be inclined to regard such a person as not wholly debased, and possibly worthy of some measure of leniency. If the offence is not too grave, treatment rather than punishment may be a possibility, and at all events something less than the maximum punishment is likely to be imposed.

At the Central Criminal Court, when a man with a criminal record was sentenced by Ashworth, J. to imprisonment for life on conviction of grave sexual offences against a nine year old girl, the learned Judge is reported as saying " If you had pleaded guilty I might have believed there was some spark of decency in you. You are a man who has forfeited any claim to mercy."

Duty to Assist Police

It is always satisfactory to read of members of the public coming to the assistance of a constable who is being subjected to violence. Good citizens recognize it as a moral duty, provided they are physically capable, to see that a policeman who is doing his duty is not over-powered or injured by a violent prisoner. Unfortunately, there are many instances in which bystanders do nothing at all, but seem rather to enjoy seeing a policeman ill-treated.

In a recent case at Bristol a man was sentenced to imprisonment for being drunk and disorderly and assaulting a police officer. It was stated that when he and another officer were struggling with the prisoner, the officer who was assaulted called for assistance from the crowd which had gathered, but no one responded.

It is an indictable misdemeanour to refuse to aid a constable in the execution of his duty in order to preserve the peace. It has to be proved that the constable saw a breach of the peace committed, that there was a reasonable need to call for assistance and that there was no physical impossibility or lawful excuse to justify a refusal.

Prosecutions for this kind of offence are rare, but the public should know that there is such a legal duty and that in certain circumstances constituting an exceptionally bad case of refusal a prosecution might follow.

A Poor Excuse

A woman who was sentenced at Birmingham quarter sessions to imprisonment for obtaining national assistance by means of false statements about her income was said to have obtained in all something like a £1,000 to which she was not entitled. In a statement she said she was only doing what others were doing.

The learned recorder observed that her statement might be true, for there were many people who were taking advantage of the national assistance authorities, who were bound to rely largely on the honesty of applicants. He passed sentence of nine months.

The fact that other people are getting money by dishonest methods is a poor excuse for following their example, and it is a dangerous plea to advance, because the prevalence of a particular type of offence is often regarded as a reason for increasing punishment as a deterrent. Frauds in relation to national assistance are apparently all too common, and it is fairly certain that many must escape undetected. When they are discovered, and are found to have gone on for a long time, it is difficult for a court to look upon them as anything but serious offences.

Cycle Racing on Roads

Section 13 of the Road Traffic Act, 1956, when it comes into force, will introduce new provisions to regulate cycle racing on highways. There appears to be some need for such regulation if there are many instances of behaviour similar to that reported in the *Liverpool Daily Post* of September 28. According to this report 80 cyclists were taking part in a 1,000 mile eight-day cycle race. They arrived in Louth in Lincolnshire at a junction controlled by traffic lights. According to the evidence 50 of them crossed while the lights were in their favour and the remaining 30, when the lights turned to red " flooded on past " a police officer who jumped into the road to endeavour to make them obey the red light. The numbers of three of them were taken and each of these was summoned and was fined £2 for failing to obey the traffic lights.

In reply to some criticism from the bench about police arrangements for this cycle race, of which the police had had three or four days prior notice a police inspector said that it was not the practice in such circumstances to switch out traffic lights to the inconvenience of other road users. He added " Their riding did not do them any credit. They were to the right and left of all coast traffic and travelling up to 30 miles per hour. If we had taken the lights out it would have encouraged them to come in faster."

It must be a difficult problem for the police to decide what to do for the best in such circumstances and they must be careful not unduly to inconvenience other road users who wish to go about their business in a normal way. Under s. 13, *supra*, the Minister of Transport may authorize races or trials of speed by cyclists on highways and may make them subject to such conditions as the regulations authorizing them may impose. In making such regulations the needs and rights of all road users will have to be taken fully into account.

Reasons for Allowing Appeals

On September 24, 1956, at Preston, the Lord Chancellor addressing a meeting of about 300 Lancashire justices and their clerks, said that magistrates do not use sufficiently the powerful weapon of driving disqualification. We read in *The Western Daily Press* of September 21 the report of an appeal to quarter sessions from a magistrates' court decision by which a lorry driver was fined £25 and was disqualified for three months for dangerous driving. The report shows that his offence consisted of overtaking

another lorry at a speed estimated to be about 40 miles per hour (presumably, therefore, at least 10 miles per hour in excess of the legal speed limit) and cutting in too soon so that ropes on the lorry he overtook were cut and snapped and the side of the driver's cab was struck so that a fire extinguisher fell on that driver's head. That driver sounded his horn and switched his lights on to try to induce the offender to stop, but he did not do so. He had subsequently to be traced through his lorry's number which was taken by the other driver.

On the appeal it was urged on the offender's behalf that the accident was a slight one and that he was not fit to do heavy work and that the loss of his licence meant the loss of his job. It seems probable that all these points were urged before the magistrates' court. Quarter sessions upheld the fine but did not support the disqualification. Although the report does not give them it may be that they announced their reasons for this decision, but if not, the magistrates responsible for the original decision may well ask themselves where they went wrong.

So far as this case is concerned we offer no further comment, because we cannot pretend to be aware of all that was said on the hearing of the appeal. But we are prompted to say that although justices in magistrates' courts must expect that from time to time their decision will be upset on appeal it must be more satisfactory to them if some reason is given by the appeal court for its alteration of the magistrates' decision particularly when, as in this case, the magistrates appear to be trying to act on lines approved by so high an authority as the Lord Chancellor. Recorders and chairmen of quarter sessions are under no obligation to give their reasons, but would it not be helpful if they were to make a general practice of doing so, if they do not already?

Identifying the Driver

A correspondent, to whom we are indebted, has written to us about our answer to P.P. No. 12 at 120 J.P.N. 607. He informs us that in 1952 at his court a case was heard in which a defendant was summoned for offences under ss. 11 and 22, Road Traffic Act, 1930. After the summonses had been served the prosecution considered that there was some doubt whether the evidence of the driver's identity was sufficient. The defendant who had been summoned was the owner of the vehicle and he was asked, by virtue of s. 113 (3), to give information as to the driver's identity. He failed to do so, and was then summoned for that failure. The magistrates' court took the view, on the summons under s. 113 (3), that once the defendant had been summoned in respect of the offences under ss. 11 and 22, he could not be required, as a defendant, to provide evidence against himself by being asked, at that stage, to say who the driver was. The case was taken to the Divisional Court, and that court decided that the obligation under s. 113 (3) continued even after the commencement of the proceedings under the other sections. It would clearly continue, therefore, if only a notice of intended prosecution had been given.

The name of this case, which our correspondent believes was not reported, was *Hawkes* v. *Hinckley* and it was heard in the Divisional Court on May 14, 1952.

Our readers will appreciate that the point in that case was not quite the same as that in the practical point in question because in the practical point we were asked, in effect, whether a person who had been assumed by the police to be the driver could thereafter be treated by them as " any other person " within the meaning of s. 113 (3). In spite of this difference, however, we now incline to the view that, having regard to the decision in *Hawkes* v. *Hinckley*, *supra*, the probability is that the same reasoning would be applied and that it would be held that " any other person " included someone, other than the owner, whom the police had decided to treat as the driver but against whom they required further evidence of identity.

Road Traffic Act, 1956

Whatever may be the reasons which justify the practice there is no doubt that to bring an Act of Parliament into force piecemeal is a highly inconvenient method for those who have to ascertain and to keep in mind which parts of it are in force (and when) and which are not.

S.I. 1956 No. 1491 (C. 10) brings parts of the Road Traffic Act, 1956 into force as follows:—

On October 1, 1956. Sections 1 (4); 16; 39; 40 (and sch. 6) 45; 47 (1); 49; 50, 51 (and parts of sch. 8) 52; 53 (1) and (2); 54; 55 [(except subs. (4)) and part of sch. 9]. The paragraphs of sch. 8 referred to are 14, 21, 24 to 30, 33 and 36 to 41.

On November 1, 1956. Sections 7 to 12; 14; 26 (except that part of subs. (1) which relates to a fine for contravention of an order made under s. 46 (2) of the 1930 Act) 27 to 32; 43; 44; 46 and sch. 4 and parts of schs. 8 and 9. The paragraphs of sch. 8 are 4 to 11; 12 (except sub. para. (5)) 13, 15 to 18, 22, 23, 31 and 35.

The parts of sch. 9 brought into force on these two dates are those effecting repeals which follow from the bringing into force of the provisions of the new Act referred to above. Our readers will appreciate that these repeals cannot conveniently be listed here.

The Ministry of Transport and Civil Aviation has issued a press notice calling attention to some of the more important provisions affected by the statutory instrument. Some of these are:—

October 1.

Section 16. Driving tests for those who have not renewed their licences for 10 years or more.

Section 4. Built up areas speed limit now permanent.

Section 40 *and sch.* 6. Amendment of law about private coach parties.

Section 50. Pedestrian controlled grasscutters exempt from the Road Traffic Acts and treated, for lighting purposes, as hand-propelled vehicles.

November 1.

Section 8. New offence of causing death by reckless or dangerous driving.

Section 9. New provisions relating to those accused of being drunk *in charge of* a motor vehicle.

Section 26. Higher maximum penalties for dangerous and careless driving and for *driving* whilst under the influence of drink or drugs.

Section 11. New provisions for pedal cyclists as to dangerous and careless driving and driving whilst under the influence of drink or drugs.

Section 14. Pedestrians required to obey traffic policeman's directions.

Section 7. Sale of motor vehicles with defective brakes, steering, tyres or lighting.

Section 29. No *compulsory* disqualification or conviction for insurance offences. No power to limit disqualification to class of vehicle being driven.

Sections 27 *and* 28. Appeals against disqualification.

Section 43. Speed of *unladen* goods vehicles restricted.

We hope, in due course, to call attention to any fresh statutory instrument bringing other parts of the Act into force.

PRINCIPAL OR ACCESSORY AFTER THE FACT

By C. B. ORR, *Barrister-at-Law*

On July 28 and 29, 1956, one Fyson was tried and acquitted at Essex quarter sessions on a charge of stealing at Leyton on February 11, 1956, nine tons of soya meal.

Another man, a serving soldier named Sutton, had previously pleaded guilty of taking and driving away without the owner's consent a lorry, on which the meal was loaded, from Grantham on February 10 and of stealing the load at Leyton on February 11. He had not been charged with stealing the lorry at any time.

The facts proved were that Sutton and another soldier, finding a 10 ton lorry outside a roadside café near Grantham with the key in it, took it and drove it to London. The other soldier dropped off at Warren Street station and did not again enter into the picture. Sutton drove to his uncle's house near Leyton, discussed the matter with him, telling him that the load was potatoes, and then parked the lorry nearby, retaining the key in his possession. Another person, X, and Fyson shortly afterwards inspected the load and, finding it to be meal not potatoes, started to go home. They met Sutton in the street and after they had had a cup of tea together yet another person, Y, came on the scene. X and Y had a private conversation and X then told Sutton, in the presence of Fyson, that Y knew a man who would buy the meal. The lorry was eventually driven to a yard by Sutton, three bags of meal were there removed from the load and the police arrived just after the lorry had been removed from the entrance to the yard.

The true driver of the lorry hitch-hiked to London, reported to his employers and as the result of a telephone call (not probed by either the prosecution or the defence) went with his employer and saw the lorry, with load intact, where Sutton had parked it. Neither the driver nor his employer did anything to retake possession of the lorry and load and, while their attention wandered, the lorry was again driven off by Sutton.

The case for the prosecution was that Sutton took the lorry in order to get to London without any intention of stealing it or the load and on the morning of the next day, being tempted by Fyson and X, formed the intention of stealing the load and drove the lorry and load to the yard where the three bags were unloaded.

The prosecution evidence showed that Fyson had taken no active part in moving the lorry or load, but had merely been present. He had offered to show Sutton the way to the yard but this offer had been refused. He had walked alone to the yard and when the police arrived was found by the cab of the lorry talking to Sutton.

Fyson made a statement to the police to the effect that a friend, X, asked him to move a lorry. He went with X to do so, but when he saw the load was meal not potatoes he started to go home. On the way he and X met Sutton in the street. After some talk over a cup of tea they were again on their way home when Y appeared. Y had a private talk with X, who then told him and Sutton that Y knew a man who would buy the meal. After that he just tagged along and did nothing in the matter. This statement was relied upon by both the prosecution and the defence.

Sutton under cross-examination admitted that he stole the lorry at Grantham (but later hedged on this when the learned chairman pointed out that perhaps he did not understand the point of the admission), that he was an expert driver and could have taken any of the many other lighter lorries at the café, that he was perfectly competent to drive a lorry without a key, that he did not abandon the lorry at some handy tube station in London, that he kept the key when he parked the lorry thereby stealing the key although it was of no particular use to him. He also admitted that he removed his uniform overcoat and put on a coat found in the lorry and altered his uniform beret so as to avoid attracting attention while driving the lorry in the Leyton area.

One Heaney was also charged with stealing the nine tons of meal and with receiving the three bags unloaded at the yard. On a submission made by his counsel, the learned chairman directed the jury that they should acquit on the charge of stealing and consider only the charge of receiving. Heaney was convicted of receiving and fined.

Counsel for the defence of Fyson called no evidence and based his submission to the jury on two legs: First, that no matter what Fyson's intention was when he first went to the lorry, when he found no potatoes he gave up any intention to steal that he may have had, that this was clear from his intention to return home, twice mentioned in his statement to the police, and that from then on he was a mere spectator and no accomplice. Secondly, that if the jury considered that he was an accomplice, he was only an accomplice after the fact and so could not be convicted on the indictment. Counsel submitted that although Sutton had only been charged with taking and driving away the jury might well think that when he selected the 10 ton lorry with a nine ton load he had an intention to steal, that if the jury were not satisfied with this, they might take any of the following times as the time of the subsequent intent to steal: (*a*) when he failed to abandon the lorry in London; (*b*) when he drove to his uncle's house and spoke to his uncle; (*c*) when he disguised his uniform; (*d*) when he parked the lorry and took the key away. That any of these times were sufficient to secure Fyson's acquittal as a mere accessory after the fact.

Counsel further submitted that in law the original taking in Grantham was a trespass, which became a felonious taking on the subsequent formation of an intent to steal, *R.* v. *Riley* (1853) Dearsley 149, approved in *Ruse* v. *Read* [1949] 1 K.B. 377, and *R.* v. *Matthews* [1950] 34 Cr. App. R. 55, and so, whenever Sutton formed his intention to steal, the felony was complete at Grantham and Fyson could at most be only an accessory after the fact.

The learned chairman, in summing up, directed the jury that if they believed that Fyson did not come into the matter until after Sutton had formed the intention to steal, they must acquit. He did not specifically deal with counsel's submission based on *R.* v. *Riley*, which therefore calls for some consideration.

Hale treats a subsequent intent to dispose of property taken as indicating an original felonious intent. At I *Hale* 509, he states: "So if my servant, without my privity, takes my horse, and rides abroad 10 miles about his own occasion, and returns it again, it is no felony, but if in his journey he sells my horse as his own, this is declarative of his first taking to be felonious, and *animo furandi*."

This view is taken by Williams when dealing with the rule that the physical act must be contemporaneous with the guilty mind in crimes requiring *mens rea* as well as *actus reus*. The

General Part, para. 25, where he writes: " But the court may be ready to construe the act as continuous, or to ignore a slight interval of time between the act and the intent, or even (as in larceny) to construe fictitious acts in order to evade the rule."

In *R.* v. *Riley*, *supra*, Riley while driving a flock of lambs from a field, without noticing it, drove with the flock a lamb belonging to someone else. He sold his flock and at that time noticed the extra lamb and sold it also. Giving judgment, Pollock, C.B., said: " But in the case now before the court, the prisoner's possession of the lamb was from the beginning wrongful, here the taking of the lamb from the field was a trespass; or if it be said that there was no taking at that time, then the moment he finds the lamb he appropriates it to his own use. The distinction between the cases is this: if the original possession be rightful, subsequent misappropriation does not make it a felony; but if the original possession be wrongful, though not felonious, and then a man disposes of the chattel, *animo furandi*, it is larceny." Parke, B., held: " The original taking was not lawful. The prisoner being originally a trespasser, he continued a trespasser all along, just as at common law, a trespass begun in one county continued in another, and, being a trespasser, the moment he took the lamb with a felonious intent, he became a thief. He at first simply commits a trespass; but as soon as he entertains a felonious intent that becomes a felonious trespass."

Pollock, C.B., seems to prefer to relate the felony back to the original taking. During the course of argument he had said: " The difficulty in the case is; when can it be said there was a taking." To this Liddell (for the defence) replied: " If not when the flock left the field, when was the taking." Parke, B., seems to time the felony at the moment of felonious intent, but during the argument he had said: " When the 30 lambs left the field the prisoner must have driven them away; then he became a trespasser, though not a felonious trespasser; but when he afterwards sold the lamb the trespass became a felony."

Referring to *Preston's* case, 2 Den C.C. 353, Liddell said: " In that case one of the Judges asked whether if a man takes an umbrella by mistake, and three or four days afterwards discovered who the owner was by the name upon it and then resolved to keep it, would that be larceny?" Parke, B., replied: " The taking being a trespass; when there is a *animus furandi* it becomes a felony."

The Divisional Court in *Ruse* v. *Read*, *supra*, followed *R.* v. *Riley*, *supra*, as did the Court of Criminal Appeal in *R.* v. *Matthews*, *supra*, but neither case is of much help as indicating when the felony was complete although in the former Humphreys, J., in spite of the fact that the justices found that at the time he took the cycle Read was so drunk as to be incapable of forming an intent permanently to deprive the owner of his property, seems to have found it difficult to believe that there had in fact been no felonious intent from the beginning.

In *Moynes* v. *Coopper* [1956] 2 All E.R. 450; 120 J.P. 147, in which Coopper was charged with stealing a sum of money contained in a pay packet handed to him in the circumstances that the packet by mistake contained a sum greater than that due to him and that at the time the packet was handed to him Coopper was unaware how much it contained, Stable, J., at p. 449, in a dissenting judgment, discussed *R.* v. *Riley*, *supra*, and pointed out that at the time Riley drove the flock from the field he did not know that it included the extra lamb and so was unable to form an intention, honest or otherwise, in respect of it. Stable, J., put the time of the felony at the time of the discovery of the lamb and formation of intent to deprive the owner thereof and applied that timing to consider Coopper guilty of larceny of the money he found in the pay packet when he opened it.

Lord Goddard, C.J., and Hilbery, J., however held that as the taking of the packet with the money in it was innocent and not tortious, the subsequent intention to appropriate did not make Coopper guilty of larceny. The majority apparently did not agree that the taking could not be antecedent to the taker becoming aware of the fact that he had the property taken in his possession and by inference were of opinion that the subsequent felonious intent of Riley related back to the time he drove the flock from the field.

Where the original taking of a horse and cart was felonious, in *R.* v. *M'Makin and Smith* (1808) Russ. & Ry. 332n., the prosecution sought to continue the asportation until the cart was unloaded in order to bring in as a principal Smith, who only helped in the unloading, but the presiding Judge directed an acquittal on the ground that Smith could only be an accessory after the fact.

So also in *R.* v. *King* (1817) Russ. & Ry. 332, where King joined the felons only 30 *yds.* from the warehouse which had been broken into and then helped to remove the stolen property, it was held that he could not be convicted as a principal.

On the other hand where goods were lawfully on a boat and part of them having been moved by the crew with intent to steal and without the knowledge of the master, who subsequently coming to know of the previous asportation, assisted in a further asportation of that part of the goods, *R.* v. *Dyer*, 2 East P.C. 767, it was held that despite the first asportation the goods were still lawfully on the boat and still in the possession of the true owner, that the abstraction was incomplete in respect of the master, Dyer, until the goods had actually been removed from the boat and that as a consequence Dyer was guilty as a principal.

Archbold, 33rd edn., 543, states the law on the subject as being: " although the goods had in the first instance been obtained without a felonious intent, yet if the possession of them was obtained by a trespass, the subsequent fraudulent appropriation of them, during the continuance of the same transaction, was a larceny." Although this seems to imply that the subsequent appropriation of them is the larceny and although this view can be supported from the words of Parke, B., in *R.* v. *Riley*, *supra*, it is submitted that the true view is that the original taking having been tortious becomes felonious.

Archbold requires a continuance of the same transaction and this also can be deduced from the judgment of Parke, B. It might be said that where a person takes and drives away a vehicle his trespass ends as soon as he abandons it. In *Ruse* v. *Read*, *supra*, Humphreys, J., seemed to expect a return of the cycle to the owner or at least some action taken by the " borrower " which would lead to a return to the owner. In the cases of Smith and King the Judges, distinguishing *R.* v. *Dyer*, *supra*, refused to allow any continuance of the asportation in order to convict a late comer. The civil liability in trespass certainly continues, despite any abandonment, until the Limitation Act applies and it might be said that the trespass continues even after the " borrower " has ceased to exercise any control over the vehicle.

In *Fyson's* case Sutton kept the key of the lorry so his trespass continued even though his intention at the time of removing the key may have been to abandon the lorry and load. There can be no doubt that he knew that he had taken the load and lorry when he drove the lorry from the café at Grantham so no argument based on the judgment of Stable, J., could be applied to his case. It is submitted therefore that whenever he formed the intention to steal the load, the taking at Grantham was rendered felonious by that intention and that at law Fyson could only be an accessory after the fact.

EXPOSED FOOD

The prosecution of a grocer in Greater London for smoking, while he was standing near the bacon slicer and a counter carrying uncovered cheese, was reported in *The Times* some time ago. It made good headlines for the popular newspapers, and we spoke of it in our Notes of the Week. The defendant had been seen twice in a short period committing the offence, and had been warned by the inspector; on the second occasion summonses were issued in respect of both occasions, and two convictions were obtained. We had said earlier in an article about the Food Hygiene Regulations, 1955, that we did not feel quite happy about reg. 9 (*e*) as applied (for instance) to the kitchen of a restaurant, seeing that in a large proportion of family kitchens smoking by the person who handles and cooks the food is taken for granted. The argument on reasonableness, so far as such an argument can be advanced, is even stronger against the regulation as applied in shops; many tobacconists, for instance, sell confectionery unwrapped as well as in packets, and habitually smoke behind the counter. A further complication is that in so many shops uncovered food is exposed to the cigarette ash of the customer. Nevertheless, even if reg. 9 (*e*) is not the most convincing enactment in the Regulations of 1955, it is a good thing generally for traders and customers to be reminded by the newspapers that the law is interested in the contamination of food exposed for sale in shops. We say "customers" because one of the just complaints of the tradesman is that, whatever steps he takes to teach his assistants and to improve his premises, he has no weapon against customers who contaminate the stock —not merely by tobacco ash but by sneezing, coughing, and handling. It was for this reason that in an earlier article we spoke of the quantity of food, susceptible to quick contamination, such as made-up savouries and flour confectionery, which is still exposed uncovered in some of the best known provision shops in the West End of London, and probably in even worse conditions elsewhere, and ought at least to be protected in some way.

From another London suburb, a reader reports what his clients call a "blitz" upon small shopkeepers. A tobacconist and confectioner who sells soft drinks, and has a sink with hot and cold water in the basement, has been told by the public health inspector of the county borough that he must bring the pipes up to the ground floor and fix another sink. He is determined not to do so, and there may be an opening for an interesting decision by the magistrates, and even by the Divisional Court if the man is backed by his trade association. It can be argued on the local authority's side that the shopkeeper and his wife on a busy day in summer are not likely to take used glasses to be washed downstairs. The shopkeeper on his side can urge with force, as he has done in conference with our correspondent, that nothing has yet been done in his locality towards requiring publicans to wash drinking glasses properly, and if this case comes into court his advocate can also point out that (*a*) and (*b*) in reg. 19 (1) require the washing facilities to be on the premises. The regulation does not say they must be in the same room or on the same floor as the food. According to the same informant, a fruiterer and greengrocer next door has been told by the inspector that hot and cold water must be installed in the lock-up shop. Whether this shop already has cold water our correspondent, who has not been professionally consulted by the greengrocer, is not sure. If not there would be difficulty about washing down the shop, which must sometimes be needed. If there is cold water, the expense of providing means of heating it would not be prohibitive, but reg. 19 (1) (*b*) does not require this if nothing is sold but vegetables and fruit. Here again reasonableness comes into the matter, when it is remembered that thousands of barrows parade the streets, selling soft fruit like grapes and plums, which will be eaten without being peeled or washed. We are also told by a reader who passes every morning through Victoria station (in Westminster, not one of the several stations of the same name outside London) that he is still constantly affronted by the sight of vans unloading bread, cakes, and flour confectionery for eating places hard by the station exit. The vans (he says) are left open, while the vanman carries trays across the footway. Often a tray is placed upon the footway, in the mud, sometimes rain, and canine ordure, while another tray is taken out. The first is then pushed back into the van, to drop its picked-up filth on whatever is below. All this goes on close to a sickening collection of lidless garbage bins, and rubbish piled against the station wall, where the vans remain as long as the drivers find convenient, with the wind blowing dust, flies, and dirty paper through the open doors. To return to the suburban county borough: in yet a third case in the same council's area it is alleged that the owner of a fish and chip shop has given up business, rather than comply with the new enforced ablutionary regulations. This business is to be taken over by a firm which is willing to comply, and there can be no doubt here of the propriety of imposing these obligations without delay.

One moral which occurs to us is that these small traders would save themselves much trouble (though they might also deprive their solicitors of some small and hard earned fees) if they belonged to their appropriate trade associations, and regularly read the weekly or other periodicals which these associations issue. At the present day, the individual trader can in this way discover what he has to do, and in food hygiene more than in most subjects it is true that ignorance of the law does not excuse. Even though the provisions of the regulations may not be all of equal value; even though some public health inspectors may let zeal outrun the legal powers of the local authority (and obviously solicitors in private practice are justified in looking out for this, when consulted by a shopkeeper); the cumulative effect of activity, if only it can be kept up, will be highly beneficial to the public. We are less afraid of over activity here and there than of continued laxity where laxity has become a habit, and of a widespread slackening of effort when the novelty of the new regulations has passed.

ADDITIONS TO COMMISSIONS

CARMARTHEN COUNTY

Isaac Davies, Tircelyn, Llangadog.
Lewis John Davies, Post Office, Pencader.
Emrys Charles Evans, 49 Tyrfran Avenue, Llanelly.
Mrs. Mary Naomi Griffiths, Bridge Pharmacy, Newcastle Emlyn.
Mrs. Mary Ainslie Howell, Godor, Nantgaredig, Carmarthen.
Rufus Jenkins, 147 Ammanford Road, Llandebie.
David John Jones, 16 Parcymynach, Pontyberem, Llanelly.
Mrs. Mary Joseph, 25 College Hill, Llanelly.
Thomas Godfrey Lewis, Brodulais, Llanwrda.
Dr. Hugh William Lewis-Philipps, Clyngwynne, Llanboidy, Whitland.
Mrs. Martha Ann Phillips, 160 Cwmamman Road, Garnant, Ammanford.
Miss Mollie Doreen Phillips, Cilyblaidd, Pencarreg, Llanybyther.
Mrs. Gwendoline Doris Ungoed-Thomas, Parsons Lodge, Laugharne.
Gwilym Rees Thomas, Brynteg, Blaenau Road, Llandybie.
Dr. Huw Dyfan Walters, Church House, Llangadog.

LIABILITY OF LANDLORD AND TENANT FOR STATUTORY NUISANCE

By K. T. SAMSON

The desire for neat classification often leads the legal writer to exclude from the treatment of a particular branch of our law matter which, though having a direct bearing on the rights under discussion, cannot itself be said to fall within the chosen heading. Thus statutory provisions dealing with public health tend to become the poor relations of the classical common law. In a series of articles[1] published by Mr. L. A. Blundell some years ago, in which he dealt with the position of landlord and tenant in contract and in tort in respect of disrepair, nuisance, and dangerous premises, both in relation to each other and towards third parties, liability for statutory nuisances under the Public Health Act, 1936, was not discussed. Similarly, in *Clerk and Lindsell on Torts* only one sentence is devoted to statutory nuisances.[1a]

It is proposed in this article to discuss the effect on landlords and tenants of the provisions of the Public Health Act, 1936, relating to statutory nuisances, to which local authorities most frequently resort in dealing with defective premises. Statutory nuisances are defined in s. 92. Sections 93–100 provide the machinery for their abatement, the first step being service of an abatement notice by the local authority.

Essentially these provisions now operate as a means of compelling landlords to carry out repairs. The writer has examined the abatement notices served in 1955 by one authority. In only three cases could it clearly be said that the effect of the service of an abatement notice would not be to compel a landlord to execute repairs for the benefit of his tenant, being cases of nuisances arising respectively from pigeons, from the accumulation of rubbish on a vacant site, and from a stone water trough in a dirty and insanitary condition. There were several cases of smoke nuisance, but most of them seemed to relate to defective chimneys causing discomfort within the house itself. Typical matters in respect of which notices were served were: dampness arising from defective roofs, walls, windows, or guttering; defective plaster; flaking ceilings; defective sashcords; dry rot and other defects in floors; defects in chimneys. All the notices were served on the owner.[2]

The district of the authority to which the above remarks relate is predominantly residential. In an industrial area a greater variety of nuisances will be found, in respect of which the occupier may not enjoy such a sheltered position. But it is believed that the preceding paragraph gives a correct picture of the operation of the Act in respect of house property everywhere.

It is intended to deal here with three questions which a landlord or tenant may ask himself if served with an abatement notice: Is there a statutory nuisance? Am I rightly served? If I comply with the notice, can I recover my expenses?

IS THERE A STATUTORY NUISANCE?

The type of nuisance most frequently met with and of greatest concern to landlords and tenants is that mentioned in subs. (1) (*a*) of the definition section (s. 92): any premises in such a state as to be prejudicial to health or a nuisance.

In the writer's view, "nuisance" in this context means the same as at common law, or at any rate has no wider meaning. The provisions of the Public Health Act, 1936, relating to the abatement of nuisance can be traced back to the Nuisances Removal Act, 1855, where the definition referred to "premises in such a state as to be a nuisance or injurious to health."[3] By 1855 the expression "nuisance" had a definite meaning at common law, and it seems reasonable to assume that Parliament was using the term accordingly. In *Banbury Sanitary Authority* v. *Page*,[4] Grove, J., said that the expression "nuisance" in s. 47 of the Public Health Act, 1875, which dealt with swine kept in a dwelling-house so as to be a nuisance, was used "in the ordinary legal sense," and that view would equally apply to s. 91 of that Act, which s. 92 of the Act of 1936 replaced. In *Halsbury's Laws of England*[5] it is stated that "the term 'nuisance' when used in statutes generally bears the strict meaning of legal nuisance." Although it has been held that the Public Health Act, 1875, did not apply to every kind of nuisance at common law,[6] it has never been suggested that the word used in the definition might have a wider meaning than at common law. Important consequences follow from this conclusion. In most cases where an abatement notice is served, the matter complained of is confined within the premises in question: it arises and manifests itself on the same premises. It is submitted that, to establish the existence of a statutory nuisance in such a case, it must be shown that the premises are in a state which is prejudicial to health, and the alternative "or nuisance" can have no application. At common law a nuisance may be public or private. A public nuisance must affect the rights of members of the public; something confined within particular premises cannot do so. A private nuisance is an interference by an owner or occupier of property with the use or enjoyment of neighbouring property;[7] it arises out of a state of things on one man's property whereby his neighbour's property is exposed to danger.[8]

The view expressed above is contrary to the opinion of Viscount Caldecote, C.J., in *Betts* v. *Penge U.D.C.*[9] There the landlord removed window-sashes and the door of this tenant's flat. The magistrates found that the premises were in a state which interfered with the personal comfort of the occupier of the flat, and that there was a statutory nuisance. On appeal it was argued for the landlord, firstly, that the magistrates' finding negatived any suggestion that the premises were in a state prejudicial to health, and, secondly, that there was no nuisance, the latter argument being apparently based on the contention that "nuisance" in the Act meant public nuisance, and not on the ground that the matter complained of was confined to the premises. Viscount Caldecote accepted the first argument, saying, "we must take the case as it is,"[10] but he held that

---

[1] 5 The Conveyancer, pp. 100, 163 and 261.

[1a] 10th edition, p. 544.

[2] Of all the notices served by the authority under the Public Health Act, 1936, during the year in question, only one—under s. 75, requiring provision of a dustbin—was addressed to the occupier. In that case the landlord had successfully appealed against an earlier notice served on him.

[3] The legislation can be traced to its origins in Acts of 1846 and 1848, where the terminology is somewhat different. The 1848 Act uses the expression "a nuisance to or injurious to the health of any person."

[4] (1881) 8 Q.B.D. 97.

[5] 2nd edition, Volume 24, p. 20.

[6] *R.* v. *Pedley* (1889) 22 Q.B.D. 520, and *Great Western Railway Co.* v. *Bishop* (1872) L.R. 7 Q.B. 550.

[7] Talbot, J., in *Cunard* v. *Antifyre, Ltd.* [1933] 1 K.B. 551, at 577.

[8] Atkinson, J., in *Spicer* v. *Smee* [1946] 1 All E.R. 489, at 493. The ancient lineage of the rule that a nuisance cannot be committed on the plaintiff's land is shown by the case in the Year Book 13 Henry VIII, referred to in Prof. F. H. Newark's article in 65 L.Q.R. 480.

[9] [1942] 2 All E.R. 61; 106 J.P. 203.

[10] At p. 62.

" if a thing is an interference with the comfort of persons, s. 92 (of the Public Health Act, 1936) makes it a statutory nuisance."[11] He relied on *Banbury Urban Sanitary Authority* v. *Page*,[12] *Bishop Auckland Local Board* v. *Bishop Auckland Iron Co.*,[13] and *Malton Board of Health* v. *Malton Manure Co.*[14] But in all these cases the nuisance affected persons beyond the premises on which it arose, and constituted a nuisance at common law. Thus in the *Malton Manure Co.* case Stephen, J., said: " The obvious effect of the processes described would be to create a bad effluvium, such as is admitted would be a nuisance at common law."[15] At common law a private nuisance may consist of encroachment on a neighbour's premises, physical damage to a neighbour's premises, or undue interference with a neighbour's enjoyment of his premises.[16] Injury to health is not a necessary element. Concentration on this aspect of the law of nuisance and on showing that the Public Health Act referred to private as well as public nuisances appears to have blinded the Lord Chief Justice to the fact that interference with neighbouring premises is an essential factor. Humphreys, J., while agreeing with the observations of the Lord Chief Justice, adopted a more cautious attitude. Noting that the justices had not found that the premises were not in a state prejudicial to health, he held that on the facts they were entitled to come to the conclusion as a matter of law that a statutory nuisance existed. In other words, he was recognizing that premises without windows and doors were likely to be in a state prejudicial to health, and the justices' finding in law was therefore justified. Cassels, J., agreed with both the Lord Chief Justice and Humphreys, J.

Betts v. *Penge U.D.C.* may be regarded as an instance of hard cases making bad law. In the writer's opinion it should be regarded as a decision on particular facts which does not have wider application. The grounds for adopting such a view are:

(*a*) The judgments proceed on different grounds;

(*b*) The grounds stated by Viscount Caldecote are contrary to principle;

(*c*) In *Harold* v. *Springett*[17] arguments based on Viscount Caldecote's judgment found short shrift at the hands of Lord Goddard, C.J. In that case walls and ceilings were stained, dirty, and flaking, and in need of decorative repair. The premises were not in a state injurious to health nor unfit for human habitation, and the magistrate found that no statutory nuisance existed. On appeal it was contended that the defects caused discomfort and inconvenience to the tenant, and, on the authority of *Betts* v. *Penge U.D.C.*, constituted a statutory nuisance. Lord Goddard, C.J., said: " The facts in *Betts* v. *Penge U.D.C.* were entirely different. We think that the magistrate was perfectly right in the present case. The appeal is dismissed, and I do not propose to deliver any judgment because I think it is too clear for argument."[18]

A person served with an abatement notice in respect of a defect whose manifestation is confined to the premises on which it arises should therefore ask himself: are the premises in a state prejudicial to health ? Section 343 (1) of the Public Health Act, 1936, gives the following definition: " ' prejudicial to health ' means injurious, or likely to cause injury, to health." Notices are occasionally served in respect of defects not covered by that definition. Here are some actual examples: flaking walls and ceilings; defective fireplace, surround, window and plaster; dirty scullery walls and ceiling; wall and ceiling plaster defective; windows requiring easing; open grate and kitchen range defective; defective fireback and dislodged stone surround; defective firegrate and hearth. Any of these may become statutory nuisances, as where walls become damp, where a room is filled with smoke as a result of a defect in a fireplace, where there is danger of a wall or ceiling collapsing and causing injury, or where inability to open a window prevents proper ventilation. But the existence of the defects in itself is not sufficient.[19]

So far we have considered cases of defects too slight to constitute a statutory nuisance. At the other extreme there are cases where the defects are so extensive that large sums would have to be spent to make the property reasonably fit for habitation—property often old, past its useful life, and productive of little revenue. The service of an abatement notice in such circumstances may impose undue hardship. In recent years property owners have from time to time offered to give property to local authorities in order to escape that hardship, and it is to be noted that local authorities now have power under the Housing Repairs and Rents Act, 1954, to acquire property unfit for habitation in respect of which a demolition order would otherwise have to be made. In *Salisbury Corporation* v. *Roles*[20] an abatement notice was served on the owner of property which was unfit for habitation, could not be rendered fit at reasonable expense, and would have been ordered to be demolished but for the post-war housing shortage. The owner wished to demolish, but could not do so, because his tenants were protected by the Rent Acts. The justices dismissed a nuisance summons, because they felt that the local authority should have exercised their powers under the Housing Act, 1936, to order demolition, and that it would be unreasonable to make a nuisance order. It appears clear that, as a matter of law, they acted wrongly, but on appeal the court adjourned the case, Lord Goddard, C.J., saying: " The finding of the justices shows that great hardship would be caused to the respondent house-owner if nuisance orders were made here. . . . This is eminently a case which the corporation, since local authorities are always presumed by this court to be ready and willing to act reasonably, should have an opportunity of considering further." The action was subsequently settled out of court, the appeal being withdrawn on the owner's undertaking that any cottages becoming vacant would not be re-occupied and that running repairs would be carried out to such of the houses as were still let and for which rent was being received, the corporation paying the owner's taxed costs.[21]

(*To be concluded*)

[11] At p. 64.
[12] (1881) 8 Q.B.D. 97.
[13] (1882) 10 Q.B.D. 138.
[14] (1879) 40 L.T. 755.
[15] At p. 757.
[16] *See Clerk and Lindsell on Torts*, 10th edition, p. 545.
[17] [1954] 1 All E.R. 568.
[18] At p. 569.
[19] *See Warman* v. *Tibbatts* (1923) 87 J.P. 53.
[20] (1948) W.N. 412.
[21] The writer is indebted to the owner's solicitors for information as to the terms of the settlement.

He left a Will of fifty pages
And about three thousand pounds,
They contested it for ages
On the old familiar grounds.

When at last there came the Probate
Further nuisances ensued
With an even longer action
Trying to get the thing construed.
J.P.C.

Do you recall the day
When you said you'd love, honour and obey?—
And that you were speaking of these three
In relation to ME? J.P.C.

FAREWELL TO SANITARY INSPECTORS

By PHILIP J. CONRAD, F.C.I.S., D.P.A. (Lond.), D.M.A.

A short Bill recently made its way through both Houses of Parliament to become the Sanitary Inspectors (Change of Designation) Act, 1956. It provides, in a few brief words, that sanitary inspectors appointed under the Local Government Act, 1933, and the London Government Act, 1939, shall henceforth be designated public health inspectors; and references in any enactment or any instrument having effect by virtue of any enactment to sanitary inspectors so appointed is to be construed accordingly.

The origin of this abrupt piece of legislation lies in the Report of the Working Party on the Recruitment, Training and Qualifications of Sanitary Inspectors, published in 1953, which recommended that the designation of a sanitary inspector should be altered to public health inspector (para. 172). This is the third designation since this field of employment was first initiated. Inevitably, we shall go through that transitional period when the old name will erstwhile fall from the lips and even the pen of councillors, officers and public alike, but, in due course, we shall doubtless come to be equally at home with the new title.

In making their recommendation, the Working Party observed that in recent years the process of inventing a new name or designation in place of one thought to be derogatory had been carried very far and in the absence of solid reasons for a change, they were most reluctant to suggest any further moves in that direction. Moreover, it was to be remembered that the term "sanitary inspector" was itself comparatively new. The Public Health (Officers) Act, 1921, had substituted it for "inspector of nuisances" as the general statutory designation in the provinces. Nevertheless, the modern meaning of "sanitation" and "sanitary" was more restricted than a century previous. Both in the language of the legislature and elsewhere "public health" had replaced these words. Whilst the meaning of "sanitary" had become narrower, the scope of the sanitary inspector's duties had broadened and the word had become something of a misnomer. It was for this reason that the Working Party considered that a case for substituting "public health" for "sanitary" in the designation had been made out and they declared themselves in favour of the change.

Going on to the word "inspector," they took a contrary view. They pointed out that there were inspectors of many kinds and in the service of many types of employers—Government, local government, public corporations and so forth. The functions of some were more varied and more important than those of sanitary inspectors, those of others less. In the term itself, there could be nothing derogatory and it happened to describe more accurately than any other single word the principal duties of the officers in question. The only alternative suggested to the Working Party, that of "officer," was, in their view, much less precise and the designation "public health officer" might well lead to confusion with other officers in the public health department of a local authority. Accordingly, they made their recommendation that the designation of "Sanitary Inspector" should be replaced by that of "Public Health Inspector."

Three years later that recommendation has been made law and the time has come to say farewell to sanitary inspectors as such. Whether the new designation will, *inter alia*, help to attract the badly-needed extra recruits remains to be seen. If it enhances the prestige of this branch of the local government profession, whose work goes largely unappreciated by the general public, it will, indeed, be a change for the better.

Commenting on the Act, a contemporary journal remarked that the change brought no financial reward and no alteration in status, but it was to be hoped that the incidental press publicity (such as there has been) would awaken the public to an awareness of the variety and extent of the services rendered to the community by these officers.

MISCELLANEOUS INFORMATION

NORTHERN IRELAND PROBATION REPORT

The value of youth clubs and similar organizations is emphasized in the report of Mr. C. A. Duke, senior probation officer for Northern Ireland. Referring to the preventive work done by probation officers, he notes that in the Omagh area, where the figures were fairly high a few years ago, the officer there was largely instrumental in getting one of the churches to start a youth club; in addition, he takes an active part in Scout activities himself, and there is no doubt that these combined efforts have resulted in a big decrease in delinquency in that particular area. In fact, during the 12-months period of July, 1954, to July, 1955, there was only one minor case at Omagh juvenile court.

The figures in the report show that out of a total of 1,042 children and young persons on probation 344 are members of youth movements or clubs, and the majority of these members are there through the efforts of the probation officers. Every effort is made to persuade young probationers to join a club or youth movement, but compulsion would be of little or no use, as those who feel they have been made to join make poor club members.

Dealing with the age groups of probationers Mr. Duke writes: "Out of the total on probation 139 were between the ages of 17 and 21 and only 98 were over the age of 21. I am inclined to think that more use could be made of probation when dealing with the 17-21 age group and with adults. Out of the 48 women adults placed on probation only a few were from courts other than Belfast."

Mr. Duke believes in detention in a remand home, under strict discipline as a suitable punishment for many young offenders, but, like many other people, he would like probation to follow. He recognizes that this cannot be done in respect of a single offence, but he believes that a really unpleasant experience for a month, followed by supervision, would often be the means of preventing further offences.

Helping discharged prisoners is necessarily a difficult problem, and in Northern Ireland there are handicaps beyond those experienced in England. In Ireland there is evidently a greater amount of unemployment. Further, the report states: "Probation officers are also handicapped by the fact that men who have received training in trades in Belfast Prison are not recognized for employment by local unions, whereas the trade unions in England will recognize, and admit to employment and membership, a man who has received a course of training in prison, and has received a certificate to this effect."

Help in matrimonial difficulties is sought by people who come for various reasons and on the recommendation of various organizations, but the majority come as the result of being advised by neighbours and friends, so it would appear that this part of the work of probation officers is becoming well known.

SHEFFIELD FINANCIAL SURVEY, 1955–56

Mr. F. G. Jones, F.I.M.T.A., Sheffield city treasurer, has produced another excellent booklet of his annual series summarizing the financial position of the steel city. On this occasion the booklet refers to some significant developments in local finance including the effects of the revaluation, of the repercussions of the new housing subsidies, of the problems created by the substantial increase in loan interest rates, and of the introduction of electronics to Sheffield's local government accountancy.

Mr. Jones gives examples of the way in which the revaluation has altered the incidence of the burden of rates over the several classes of ratepayers. For example, the rateable value of houses and flats comprises 44 *per cent.* of the new list compared with 57 *per cent.* of the old: pre-1914 houses are scarcely affected, post-1945 houses are moderately increased and inter-war houses raised substantially. It is noteworthy that there are 154,000 domestic properties in the city and no less than 44,000 dwellings provided under the Housing Acts.

Sheffield's population has fluctuated during the past 35 years but at 501,000 it is not now substantially different from what it was at the beginning of this period. Rateable value has, however, more than doubled and rates paid per head of population more than trebled, the latest figure being £9 6*s.* This figure is, however, below the average of £10 17*s.* for all 83 county boroughs.

A typical householder in a house now rated at £20 pays 6*s.* 4*d.* a week in rates: he has benefited considerably from the revaluation which has had the effect of increasing equalization grant from £492,000 in 1955–56 to £1,079,000 in 1956–57.

The capital expenditure of the city in 1955–56 was close on £5 million of which half was spent on housing and was financed as to £4 million out of loans, the remainder by revenue contributions, grants and special capital receipts. Mr. Jones refers to the difficulties of local authorities as a result of the present high rates of interest but points out that the operation of the Sheffield consolidated loans fund provides a buffer against the full impact. Nevertheless the average rates of interest have increased from £3 6*s.* in 1953–54 to £3 9*s.* in 1955–56, and the 1955–56 increase had the effect of increasing expenditure on debt charges for housing by £51,000 in that year. In 1956–57 a rate of £3 11*s.* is anticipated.

At November 3, 1955, the date from which the reduction in housing subsidies became effective, Sheffield had contracts let for the construction of no less than 2,600 dwellings. The city treasurer says that the new scheme of subsidies forges a new and vital relationship between slum clearance and the building programme, emphasizing the urgency of proceeding quickly with major development schemes.

Both transport and water undertakings showed satisfactory surpluses on the year's working. Traffic revenue is not likely to be so good in 1956–57 for at least one reason: it is reported that the fine summer of 1955 gave a special boost to takings.

The treasurer in referring to mechanization in his office, including the introduction of an electronic multiplier, states that increasing use of machines has made possible a reduction of 20 in staff with a consequential saving of £9,100 *per annum.*

He concludes by pointing out the essential soundness of the city's finances as exemplified in the consolidated balance sheet, which shows that it possesses assets which exceed its liabilities by £34 million.

WARWICKSHIRE LOCAL AUTHORITIES FINANCES

The county of Warwick at the centre of England contains examples of most of the features for which England is famous. Industry is centred on Birmingham and Coventry and in a lesser but still important degree at Rugby, there are charming residential resorts such as Leamington, there is beautiful country particularly in the southwest, one of the most famous of that peculiarly British institution the public school is situated at Rugby, and Stratford is, of course, the shrine of England's greatest poet.

It is interesting therefore to be able to compare in one booklet the position and sometimes the policy of the diverse local authorities comprising the administrative county: Mr. S. W. Davey, Warwick county treasurer, has performed a useful service in bringing the facts together.

We observe that in Warwickshire on the whole public funds are called upon to subsidize a greater proportion of the total expenditure on council housing in rural areas than in urban, as these figures show:

Type of Authority	*Rent Income*	*Govt. Contributions*	*Rate Contributions*	*Percentage of Subsidies to Rent Income*
	£	£	£	
Boroughs	709,000	276,000	98,000	53
Urban Districts ..	108,000	48,000	15,000	58
Rural Districts.. ..	371,000	176,000	52,000	61

But of course there are considerable individual variations within these averages: for instance in the borough of Solihull the subsidy equals 37 *per cent.* of rent income whereas in the borough of Nuneaton public aid amounts to 57 *per cent.* In the rural districts Meriden tenants also receive grants equal to 57 *per cent.* of their rents but in Shipston-on-Stour for every pound paid in rent they receive another pound as subsidy.

Most of the authorities have useful surpluses on their housing revenue accounts and in only three cases, Leamington, Atherstone and Shipston-on-Stour were deficiency contributions necessary.

As education is to county councils so is housing to county district councils: in Warwickshire of the total net loan debt of £48 million outstanding at March 31 last three-quarters was incurred on housing account.

In addition to the information on housing and loans Mr. Davey's booklet contains information about rates levied; analysis of rate levies, of rateable value, of expenditure out of rates, and of the county precept. The latter is 11*s.* 9½*d.* and total rates vary from 18*s.* 6*d.* in the boroughs of Nuneaton and Warwick to 14*s.* 4*d.* in the rural district of Alcester.

The booklet concludes with a bar diagram analyzing county expenditure from 1944–45 to 1956–57 where, among other useful information, the effort and money which the nation is putting into the education service is well exemplified. In 1944–45 education expenditure of £874,000 amounted to 35 *per cent.* of the total whereas in 1956–57 the estimate of £5,805,000 equals 55 *per cent.* of the county budget for the year.

LEICESTERSHIRE AND RUTLAND COMBINED PROBATION AREA REPORT

The value of reports made to the court by probation officers is emphasized in the annual report of Mr. George L. Whomsley, senior probation officer to the Leicestershire and Rutland combined probation area committee. He quotes two instances in which it is obvious that the decision of the court was influenced very much by such a report and he realizes the importance of careful preparation. An isolated visit to the home is not enough. He goes on: "Several other contacts with appropriate agencies may be essential before the kind of report expected by the courts can be prepared and submitted and an adjournment for more detailed social information is now being accepted in suitable cases."

Following the compilation of comprehensive data from 1951 onwards it has now been possible to present statistical comparisons covering an inclusive period of five years in relation to the various activities of probation officers. From these figures certain conclusions can be drawn as to the success of probation, but after giving some examples Mr. Whomsley quite properly adds, that caution should be brought to bear when making assessments of the results of supervision.

In dealing with domestic cases, Mr. Whomsley sees clearly the connexion between insecure and unhappy home life and juvenile delinquency, and calculates that in achieving real reconciliation between parents a probation officer may be rescuing many potential offenders from temptation to crime.

Some interesting cases are given illustrating the voluntary work done by probation officers "to whom a bewildering miscellany of problems may be brought with much the same relief of mind that a distraught parent exclaims to a neighbour concerning a sick daughter: " . . . The doctor's here, so everything will be all right." This is not the least valuable part of a probation officer's work; even when he cannot himself deal with a problem he is generally in the position of knowing where help can be obtained and of having contacts with most other agencies and organizations.

On the clerical side of the work it is noted that a proper card index system has been developed and is proving of great assistance.

BRISTOL PROBATION REPORT

The report of Mr. W. G. Cottrell, chairman of the probation committee for the city and county of Bristol, contains fewer statistics than do many reports, but it is a thoroughly interesting and useful document, because it represents a considerable amount of thinking about the probation system generally, and of course it does contain information about the work in Bristol.

The method of selecting probation officers, and the way it has developed, have drawn into the service men and women from many sources. The result, says this report, is that the average probation area has a team of officers whose combined knowledge, experience and training is equal to most demands likely to be made upon it.

The work of a probation officer is a matter of personal contact and influence, but experience has shown that collaboration and conference between officers are none the less valuable. About this, Mr. Cottrell writes: "Dealing day after day with the personal difficulties of others, a probation officer is liable to find in course of time that he is being psychologically affected by the problems of others. A regular discussion of cases and an interchange of ideas between the officers, in addition to being an application of the well-known principle that two heads are better than one, will have a therapeutic value to the probation officer himself."

The report emphasizes the importance and the difficulty of deciding which offenders are suitable for probation, and wisely adds that it

is essential that an offender should not forthwith be placed on probation without further inquiry merely because his appearance or circumstances arouse the sympathy of the bench; in most cases an adjournment for inquiries is desirable.

As to what he considers an unsuitable use of probation, Mr. Cottrell quotes the following case taken from a newspaper report. "A man of over 90 years of age was placed on probation for three years for an offence of careless driving, a condition being inserted in the order that he should not drive a motor vehicle for the three years in question. Although the Road Traffic Acts do not in such a case provide for such a period of disqualification and although it may be very undesirable that a man of that age should continue to drive, it would seem to be a waste of the probation officer's time to supervise such a case." The magistrates who made the order would no doubt reply that although the defendant could not have been disqualified for three years there was nothing to prevent them from inserting a requirement in the order to which he voluntarily consented. The suitability of what they did is a matter of opinion.

An interesting and encouraging feature of after-care work among men released from prison is the considerable number who have submitted voluntarily to supervision. This is evidence of the increasing awareness among prisoners of the value of the assistance of probation officers in the work of rehabilitation.

There is an interesting paragraph of the part played by probation officers in Divorce Court proceedings. "Towards the end of the year His Honour Judge Paton inquired if it would be possible for probation officers to make occasional inquiries and reports in divorce cases where the custody of the children was a matter of dispute. Approval was obtained from the Home Office and the Lord Chancellor's Department and since the close of the period under review arrangements have been made for this service to be provided in respect of the local Divorce Courts."

"Alcoholics Anonymous" to which we have referred several times, is mentioned in this report as "an excellent body," and an example is given of its successful work in conjunction with a probation officer.

MAGISTERIAL LAW IN PRACTICE

The Oxford Times. August 17, 1956

DATE WRONG—CASE ADJOURNED

Alleged Damage to Property

Fred Danbury, of 10, *Council Houses, Bladon, pleaded "Not guilty" at Woodstock on Tuesday to causing malicious damage to four cycle tubes, a bedsheet and counterpane, value* £5 10*s., the property of Mrs. Gwendoline Hickson, at Long Hanborough on June* 11.

Mrs. Hickson, in opening her evidence, said that the date in the summons should have been June 10.

In view of this Insp. Hollis asked for the summons to be amended, and the case adjourned for a week; this was granted.

Insp. Hollis said that on June 11, *Mrs. Hickson heard a noise and saw a man, alleged to be Danbury, slashing a counterpane and a bedsheet at the rear of the house. He had something in his hand which looked like a penknife. He then went to two cycles and cut the tyres.*

There were about 12 *cuts on the counterpane and three on the sheets.*

Danbury denied all knowledge of the affair, and stated he was at Woodstock at the time.

It was held in *Mayor, etc., of Exeter* v. *Heaman* (1877) 42 J.P. 503, that where the date of the commission of an offence differs from the date stated in the information, the case should not be dismissed, but the court should either adjourn the hearing or amend the information.

Section 100 (2) of the Magistrates' Courts Act, 1952 provides that "if it appears to a magistrates' court that any variance between a summons or warrant and the evidence adduced on behalf of the prosector or complainant is such that the defendant has been misled by the variance, the court shall, on the application of the defendant, adjourn the hearing."

The Western Daily Press. August 21, 1956

BOUGHT CAR FOR £22 10*s*.—SOLD IT FOR £2 10*s*.

A MAN who bought a car for £22 10*s. and then had to push it because it would not go was fined and disqualified from driving by Salisbury Magistrates yesterday.*

The man, Keith Martin, of Finchley Road, Salisbury, was fined £1 *and disqualified from driving for a year for not being insured; and fined* 10*s. for not having the car taxed and having no driving licence.*

Mr. D. Kirkconel, defending, said that Martin bought the car, could not get it to go, and was pushing it to a place where it could be examined. It was true he was not insured or licensed, and that the taxation licence had expired; but he did not realize he was committing any offences by pushing the car.

The car never did go, said Mr. Kirkconel, and Martin had sold it to a scrap-merchant for £2 10*s.*

We are interested in this decision of the Salisbury justices.

We are still of the opinion expressed in the article "*What is 'driving' under the Road Traffic Acts?*" at p. 327, *ante*, that it is doubtful whether a person is driving a motor vehicle when he is merely pushing it.

In *Lawrence* v. *Howlett* [1952] 2 All E.R. 74; 116 J.P. 691, the appellant was charged with using a motor vehicle in relation to the user of which no policy of insurance against third party risks was in force, contrary to s. 35 (1) of the Road Traffic Act, 1930. At the time of the alleged offence the appellant was using it as a pedal bicycle, and it could not be used otherwise as essential parts of the engine had been removed.

It was held that as the auxiliary engine was not in working condition and the vehicle could only be used as a pedal bicycle, it was not at the material time a "motor vehicle" within s. 1 and s. 35 (1) of the Act of 1930, and, therefore, the appellant had not committed an offence against the latter sub-section.

That case was distinguished in *Floyd* v. *Bush* [1953] 1 All E.R. 265; 117 J.P. 88. The facts in *Floyd* v. *Bush* were that the respondent took and rode away a motor assisted pedal bicycle without the owner's consent. He had no driving licence and no policy of insurance covering the cycle. It was also proved that he made no attempt to start or use the engine of the cycle, but pedalled it along the highway for a mile and a half. The justices, having considered *Lawrence* v. *Howlett*, dismissed informations charging him with (*i*) using a motor vehicle on a road without there being in force in relation to the user of the vehicle by him a policy of insurance in respect of third party risks,

---

contrary to s. 35 (1) of the Road Traffic Act, 1930; (*ii*) driving a motor vehicle without holding a licence, contrary to s. 4 (1) of the Act; (iii) taking and driving away a motor assisted pedal cycle without the consent of the owner, contrary to s. 28 (1) of the Act.

On appeal by Case Stated it was held that in view of the fact that the motor was in working order, the cycle was a " motor vehicle " within the meaning of the Road Traffic Act, 1930, and, therefore, the respondent was guilty of the offences with which he was charged.

In *Floyd* v. *Bush* the motor was in working order and the respondent was riding the vehicle and not merely pushing it. In this case at Salisbury the engine was apparently not in working order and the defendant was pushing the vehicle.

PERSONALIA

APPOINTMENTS

Mr. Thomas B. A. Moonlight, aged 35, deputy town clerk of Ashton-under-Lyne, Lancs., has been appointed town clerk of Harwich, Essex. He will succeed Mr. G. Congdon, and will start duty on January 16 of next year. Mr. Moonlight was appointed to his present position two years ago, coming to Ashton from Dagenham, Essex, where he served the borough council for five years, first as junior, then as senior, assistant solicitor. Mr. Moonlight is a LL.B. of Durham University and was admitted in June, 1949.

Mr. I. S. Manson, B.A., has been appointed assistant solicitor to the city of Bradford, Yorks. Mr. Manson was articled with the town clerk of Halifax and fills a vacancy created by the appointment of Mr. John Whitehead as assistant to the clerk to the justices for Stoke on Trent.

Mr. Curtis Arthur Wilmot, senior assistant solicitor to Ipswich, Suffolk, corporation, has been appointed coroner for Ipswich borough. His appointment dates from October 1, last. Mr. Wilmot, who is 34 and continues his post as senior assistant solicitor, served the legal departments of Nottingham and Southend corporations before moving to Ipswich. He succeeds Mr. Cunard Tower Dawson, who retires from the post on September 30 after having been at Ipswich since April 1932. Mr. Dawson announced his intention of resigning in April of this year. In June he decided to carry on for three further months to avoid inconvenience and distress if the borough council's failure to attract applicants to the post had left the office vacant as from July 1.

Mr. J. Higgs has been appointed a probation officer to serve Surrey combined probation area, to take the place of Mr. R. L. T. Cracknell who has become a probation officer serving the county of Hampshire, *see* our issue of July 28, last. Mr. Higgs is a serving probation officer in Lincoln city. Mrs. R. S. Higgs has been appointed as an additional probation officer in the county and will serve in the Woking area in the place of Miss K. Parker who has been transferred to the Epsom and Sutton districts.

Mr. F. R. Gray, assistant chief constable of Newcastle since May last year, has been appointed chief constable of Salford. Before coming to Newcastle, Mr. Gray, who was born in Manchester, had been a superintendent in the Metropolitan force. Early in 1950 he was commandant of the police training centre at Plawsworth, Co. Durham. He was later responsible for transferring the centre to Newby Wiske Hall, near Northallerton, Yorks. Mr. Gray, who has lived at Benton during his stay in the Newcastle police is aged 40. He is married and has three children. Mr. Gray succeeds Mr. A. J. Paterson, now chief constable of Leeds.

Chief Inspector A. E. Mothersole, of Guildford, Surrey, police force, is to succeed Superintendent A. T. Steeds at Oxted.

OBITUARY

We announce with regret the death of Mr. John Bussé, C.B.E., Q.C., who was suddenly taken ill after taking the oath as recorder of Gloucester on September 27. He was the son of William Bussé of London, and was born on January 12, 1903. Educated privately he subsequently won an Exhibition to Corpus Christi College, Cambridge, where he graduated in History and Law. Called to the bar in 1925 by the Inner Temple he elected to practise on the Oxford Circuit, on which in due course he acquired a substantial practice. He became recorder of Burton-on-Trent in 1947 and took silk in 1952. In other fields he was chairman of the Central Price Regulation Committee (1945–1953) and the author of a book about Mrs. Montague, a biographical study of a well-known " blue stocking " who enjoyed the friendship of many famous men including Dr. Johnson. The late recorder was appointed C.B.E. in 1948. In 1936 he married Helen, eldest daughter of Colonel J. F.L. Baxendale. One son survives him.

Sir Charles Chute, Bt. M.C., chairman of Hampshire quarter sessions from 1938 until 1951, has died at the age of 77. Sir Charles was educated at Eton and Magdalen College, Oxford. He was called to the bar by the Inner Temple in 1903. During the 1914–18 War he served in France. He was awarded the M.C. in 1919. Sir Charles was sworn of the Commission of the Peace for Hampshire in 1921 and four years later he was elected to the Hampshire county council. He became chairman of the council in 1938, being appointed chairman of Hampshire quarter sessions in the same year. Sir Charles held the first position until last year, resigning from the chairmanship of the quarter sessions in 1951. Sir Charles was created first baronet in 1952. He leaves a wife, but no children, so the baronetcy becomes extinct.

Mr. Frederic Viccars Barber, clerk of the peace for Hampshire, clerk to Hampshire county council and clerk of the lieutenancy of Hampshire from 1924 until 1946, has died at the age of 80.

Mr. H. Bailey Chapman, who had been town clerk and clerk of the peace of the county borough of Burton-upon-Trent for over 25 years, died suddenly on September 29, last.

Mr. Henry Shuttleworth-King, former deputy and acting town clerk of Worcester, has died.

Police Superintendent Harry James Baker, who had been in charge of the Weston-super-Mare division of the Somerset constabulary since 1945, has died at the age of 50. A native of Ilminster, Mr. Baker served in the R.A.F. before joining Somerset constabulary in 1927. He was stationed in the Weston and Frome division before becoming sergeant in 1938. In the following year he was promoted inspector. He then went to C.I.D. Headquarters at Taunton, where his promotion was rapid. He was promoted superintendent in 1940 and was in charge at C.I.D. H.Q. before being transferred to Weston-super-Mare, where he became head of that division.

BACK TO METHUSELAH

That majestic British Institution, *The Times*—the Thunderer of Printing House Square—possesses an information service which is second to none, and relies upon correspondents, at home and abroad, whose accuracy and integrity are universally acknowledged. It does not, as do many of its contemporaries, indulge in sensationalism or " stunts; " except in its traditional fourth leaders, and its recently-instituted light articles (well away from the news-pages), it never pulls our leg. Nor does it waste our time with trivialities or make a feature of what is sordid or salacious; important news, informed criticism and temperate comment fill all its pages. We may not always agree with its opinions, but at any rate we invariably respect the manner of their presentation.

Upon this sober background a recent despatch from New York stands out like a splash of colour upon a picture in black and white. The Cornell Medical Centre has spent nine days examining and observing a certain Señor Javier Pereira, a native of the South American State of Colombia. " His skin is that of an old man; his hard-worked hands reveal the changes of degenerative arthritis. But otherwise his bones and joints are in a condition that many a young man might envy. His muscles are small but very strong. He shakes hands with vigour, is able to stand on one leg and pirouette. Without shortness of breath he can walk about a seventh of a mile and climb two flights of stairs. Electro-cardiographic and other examinations of his heart show a conduction defect, but no evidence of

coronary disease. His blood pressure is normal." As to his age, unfortunately, no conclusive documentary testimony is available; but, say the doctors, "although medical science possesses at present no method of determining the exact age of any adult, non-medical evidence indicates that Señor Pereira is indeed a very old man, and that possibly he may be more than 150 years of age." His own startling claim is that he has just turned 167.

If he is right about the figure—and, after all, he ought to know—he has lived through a good deal of history. Born in 1789, which saw the commencement of the French Revolution, he was a lad of 15 when Napoleon was proclaimed Emperor, and a young man of 26 in the year of Waterloo. At Queen Victoria's accession he was only 48, and a mere chicken of 72 at the outbreak of the American Civil War. By the end of the Victorian Era he was getting on—12 years past his first century—and when the First World War began he was 125. He has, says the Hospital Report, an excellent memory for recent events, and can recall with apparent vividness many details of his past life. He is "vigorous, alert and observing, gregarious and fond of meeting people. He is still able to find enjoyment from 'Westerns' on television; he likes to listen to music and can dance in rhythm. He has a voracious appetite, smokes cigars and likes rum." He was brought to America to appear in a television show called "Believe or not," and viewers can take their choice.

The pity of it is that Señor Pereira has achieved his fame so comparatively late in life. If that other grand old man, George Bernard Shaw, had got to know him before 1921, when *Back to Methuselah* was published, he would have found some practical support for his thesis that human beings, to attain full maturity, ought to extend and could extend their lives to three full centuries. At the then modest age of 132 Señor Pereira would have been ideally cast for the part of the He-Ancient in Shaw's colossal work, and collaboration between the two of them might have produced impressive propaganda for the Live Longer Movement.

The social and legal prospects opened up by such an instance of longevity are startling indeed. The eccentric Will of Peter Thellusson, which directed the accumulation of personal estate, amounting to over £600,000, during the lives of the testator's children, grandchildren and great-grandchildren living at his death, and the survivor of them, was held valid in *Thellusson* v. *Woodford* (1798) 4 Vesey, 237, though it was estimated that the resultant fortune coming to the remainderman would amount to a hundred millions of pounds. This decision fluttered the dovecotes of the Treasury to such a degree that the law had to be changed. By the Accumulations Act, 1800, it was enacted that no property might be accumulated for a longer period, *inter alia*, than the lifetime of the grantor; but even this drastic provision will have to be revised if Señor Pereira's example proves infectious.

The great life assurance societies, one may be sure, are carefully watching the situation. If people start taking out single-premium policies, with profits, payable at death, and survive to the age of 167 or so, many companies will go out of business. Reversioners of settlements, who observe their tenants-for-life gaily topping their first hundred years, and smoking cigars and drinking rum two-thirds of the way through their second century, are bound (to say the least of it) to get a bit restive, to say nothing of the surviving trustees who may have to contemplate the prospect of administering other people's money for a couple of hundred years. But the most serious impact will be upon the finances of the Welfare State. If the general expectation of life is doubled or trebled—and Señor Pereira has shown that it *can* be done—how is the Exchequer to cope with retirement pensions commencing at 65 and continuing for more than a 100 years? Whatever the method Señor Pereira has hit upon, it is pretty sure to be nosed out by some Government actuary, not with a view to publicity and general application, but to be shrouded in the strictest reticence under the Official Secrets Acts.

A.L.P.

BOOKS AND PAPERS RECEIVED

The Police College Magazine. Vol. 4, No. 3. Autumn 1956.

Archbolds Criminal Pleading, Evidence and Practice. 33rd edn. Ninth Cumulative Supplement. Edited by T. R. Fitzwalter Butler and Marston Garsia, Barristers-at-Law. Sweet and Maxwell, 2 and 3 Chancery Lane, London, W.C.2.

Metropolitan Boroughs (Organization and Methods) Committee. Annual Report, 1955–56. Gratis (limited edition) from the Committee, at Westminster City Hall, London, W.C.2.

Eldorado Jane. By Phyllis Bottome. Faber and Faber, 24 Russell Square, W.C.1. Price 15*s*.

Cruel Parents. Case-studies of Prisoners Convicted of Violence Towards Children. By T. C. N. Gibbens and A. Walker. Published by Institute for the Study and Treatment of Delinquency, 8 Bourdon Street, Davies Street, London, W.1. Price 1*s*. 6*d*.

BIG BUSINESS

He's driving off for his 18 holes
From the company's house in the company's Rolls,
The latter of course he'll be careful to fill
With petrol and oil on the company's bill,
But let it in fairness be generally known
That the clubs and the balls are both his own.

J.P.C.

PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester, Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—Adoption—*Child of married woman—Consent of husband or mother.*

My court has an application for an adoption where the mother of the infant is married, but separated from her husband for many years, and the husband does not know of the birth of the infant, and the mother will not have him told. The birth certificate shows a blank in column 4 (name and surname of father).

Prima facie the mother's husband's consent is required under s. 2 (4) of the Adoption Act, 1950, although this can be dispensed with under s. 3. This dispensing with the consent does not of course remove the mother's husband from the category of those whose consent to the order is required under the sub-section and therefore it will be necessary to serve on him a notice in the form numbered 3 in sch. 1 to the Adoption of Children (Summary Jurisdiction) Rules, 1952 (r. 3 of which amends r. 9 of the 1949 Rules). However, the Explanatory Memorandum issued by the Home Office in January, 1950, states under para. 14 that (*inter alia*) "the consent of the mother's husband is not required if, as may appear from the birth certificate attached to the application form, he is not the father of the child." It seems doubtful to my mind that the mere fact that the mother's husband is not named as the father in the birth certificate is sufficient to make it appear that he is not the father, although I think it is adequate.

I should be glad to have your views.

R. CONFUSED.

Answer.

The child of a married woman born during the subsistence of the marriage is *prima facie* legitimate, and the presumption of legitimacy can be rebutted only by strong and satisfactory evidence. See 3 *Halsbury*, 3rd edn., para. 139. If the parties are not living apart under a decree of judicial separation or a separation order the consent of the husband of the mother is required unless and until the court is satisfied by evidence of non access, which can be given by the mother (Matrimonial Causes Act, 1950, s. 32 (1)). The birth certificate alone is not evidence upon which the court can act.

The position of the husband of the mother has been considered in previous answers at 118 J.P.N. 223 and 554. We are aware that some courts act upon the evidence of the mother as to illegitimacy without notifying her husband, but having regard to the strong presumption of legitimacy we think that the husband should be notified if he can be found. His consent is required if he is in fact the parent, and this consent can be dispensed with only upon one of the statutory grounds.

2.—Bastardy—*Affiliation order—Child legitimated—Effect on order.*

A single woman obtained a bastardy order against a single man for her child. Some months later the parties married and it would appear that such marriage legitimated the child. After a month of marriage the wife left the husband and will not go back to him. The husband apparently has said she may come back. The wife wishes the husband to maintain the child. I am of the view that the wife should apply to discharge that part of the bastardy order which relates to payment and should then apply under either the Summary Jurisdiction (Separation and Maintenance) Acts or the Guardianship of Infants Acts for custody and maintenance of the child. Do you agree?

V. ANDOR.

Answer.

We agree that the mother should apply (under s. 53 of the Magistrates' Courts Act, 1952) for the revocation of the order for periodical payments, before applying to the court under the Summary Jurisdiction (Separation and Maintenance) Acts or the Guardianship of Infants Acts.

3.—Criminal Law—*Assault on police officer—"When in the execution of his duty."*

I should be glad of your valued opinion as to whether or not a constable can be said to be in the execution of his duty under the following circumstances:

A constable, off duty, is attending a dance held in a public hall in the town in which he is stationed. During the evening there is a disturbance in the hall and the organizer, knowing him to be a police officer, calls upon him to assist in quelling the disturbance. This he does without great difficulty. Some time later the same persons again cause a disturbance and the officer goes to the assistance of the organizer and together they eject the persons from the hall. On this occasion the officer is assaulted. Whilst outside in the street the disturbance is continued and this is dealt with by the officer who was off duty and by another officer who is on duty and on this occasion there is a further assault upon the first officer. We are satisfied that it can be said that on the occasion of the second assault that the first officer is in the execution of his duty. There is some divergence of opinion as to whether the first assault was one whilst the officer was in the execution of his duty.

Your valued opinion would be appreciated.

F. LOMER.

Answer.

A constable has power to arrest anyone committing a breach of the peace in his presence, and he has power to take steps to prevent such a breach of the peace. To this extent, a constable is always on duty, and the terms "on duty" and "off duty," have reference only to his hours of work, and not to the powers he possesses. In our opinion, there is clearly an assault on the first officer "when in the execution of his duty," on the first occasion. It is not necessary to prove that the attacker knew that the person assaulted was a police officer. (*See R.* v. *Maxwell and Clanchy*, 2 Cr. App. R. 26).

4.—Factories Act, 1937—*Fire precautions—Duty of owner—Part of factory sub-let.*

My corporation own premises in the borough which are let for use as a factory for a term of 20 years with an option to renew for a further term of 20 years. With the consent of my corporation the tenants have extended the building and sub-let part of it for the remainder of the first period of 20 years which is still current. My corporation are now being held responsible under s. 102 of the Factories Act, 1937, for compliance with the provisions of the Act with regard to the portion which is sub-let (the particular requirement is the provision of audible warning in case of fire under s. 36 (7) of the Act). From the definition of "owner" in s. 152 it appears that my corporation are the owners of that part of the building occupied by the tenants, but that the tenants are the owners of that part which is sub-let: there seems to be no one person who is the "owner of the building." It also appears that this is a matter which is not within the control of the corporation as provided for in the second paragraph of s. 102.

ELEN.

Answer.

We have looked at the case of *Corporation of London* v. *Cusack Smith* [1955] 1 All E.R. 302; 119 J.P. 172, but this was under a different statute, though upon the stock definition of owner, and upon very unusual facts. In the absence of judicial authority, we think the occupier of the main factory under the head lease is the owner of the sub-let premises, since (so long as the head lease continues) he alone can sub-let and (if he chooses) can charge a rack rent for the sub-let premises. On this view, the proviso to s. 102 need not be considered, but on the information before us we agree with you.

5.—Guardianship of Infants Acts—*Order made without evidence being heard.*

An application by a wife under the above Acts was recently before the court here. Husband and wife were each represented by counsel, who, after the hearing had been put back for a lengthy period, came to an agreement as to custody, access and maintenance and asked the magistrates to make an order in the terms drafted by them. The magistrates, without hearing any evidence, made the order asked for. As an application under the above Acts has to be initiated by way of complaint, it would seem that s. 45 (3) of the Magistrates' Courts Act, 1952, becomes operative, that, without hearing any evidence, the magistrates would have no power to make the order in question and that it is really null and void. If the order is null and void, it occurs to me that, the magistrates cannot under any circumstances enforce any of the terms of the order, as for instance any arrears if they should become due, neither could they entertain any application for a variation of any of the conditions.

I feel that to put the matter on a proper footing, the wife ought probably to issue a fresh summons so as to enable the magistrates to take formal evidence, and that an order could then be made as originally agreed by counsel. If this were done would it be necessary to discharge the existing order which seems to me to be null and void?

Although these applications are by way of a complaint, as a rule no actual cause of complaint is alleged or dealt with, the form of complaint merely stating that the parties are living separate and apart, and that it is in the interests of the infant that he should reside

with the complainant. I suppose this fact is not enough to oust s. 45 (3) of the Magistrates' Courts Act, 1952.

In the book *The Magistrates' Court Act, Rules and Forms* by A. J. Chislett, B.Sc., at the top of p. 38, it is stated that, " No matrimonial or bastardy order may now be made by consent." There is no mention of an order under the Guardianship of Infants Acts.

Would you please advise generally on the situation, and particularly as to whether the magistrates can or ought to take any steps in the matter. UNOR.

Answer.

The power of a court of summary jurisdiction to do any act authorized to be done by such a court under the Guardianship of Infants Acts, 1886 and 1925 is, by r. 3 of the Guardianship of Infants (Summary Jurisdiction) Rules, 1925, to be exercised by an order upon complaint, and accordingly s. 45 of the Magistrates' Courts Act, 1952, applies.

We agree with our correspondent that orders under the Guardianship of Infants Acts can be made only after hearing the evidence, by reason of the provisions of s. 45 (2) of the Magistrates' Courts Act, 1952. The absence of details of the actual cause of the complaint could not justify making an order by consent.

We are of the opinion that it would be improper for a court to attempt to enforce an order which it knew to have been made without the necessary evidence having been heard, and that the matter should be put right by asking the mother to apply for fresh summonses, in order to give the court the opportunity to discharge the original order, and to hear the evidence before making a new order.

6.—Music, etc., Licence—*Using premises without—Whether to proceed by information or complaint—Public Health Acts Amendment Act*, 1890.

It is proposed to proceed against a person occupying premises used for public music or dancing without a licence. Proceedings are, under the above Act, taken under s. 251 of the Public Health Act, 1875. The Act of 1890 states that the house shall be a " disorderly house " and the occupier shall be liable to a penalty. Section 251 of the Public Health Act, 1875, refers to the hearing of an " Information or Complaint under this Act " and to the prosecution of offences and the recovery of penalties. It seems that the recovery of a penalty is not in the section regarded as a criminal matter and this, of course, would accord with the decision *Brown* v. *Allweather Mechanical Grouting Co.* (1953) 117 J.P. 136 (which was of course reversed by the Finance Act, 1953). As against this, it is noted from the case *Brearley* v. *Morley* (1899) 63 J.P. 582, that the proceedings under s. 51 of the Public Health Acts Amendment Act, 1890, and s. 251 of the Public Health Act, 1875, were criminal proceedings instituted by information. Are the correct proceedings in respect of s. 51 of the Public Health Acts Amendment Act, 1890, civil proceedings for a penalty or criminal proceedings for an offence?

O. INQUISITOR.

Answer.

In our opinion, the circumstances outlined by our correspondent differ materially from those which led the High Court to uphold the magistrates' court's decision in *Brown* v. *Allweather Mechanical Grouting Co., Ltd.* (1953) 117 J.P. 136.

Section 51 (5) of the Public Health Acts Amendment Act, 1890, provides for a *penalty* not exceeding £5 for every day: this, apparently, is not the same thing as a " daily penalty " mentioned in subs. (9) and which is defined in s. 11 (3) as " a penalty for each day on which any offence is continued after conviction therefor." It is noticeable, indeed, that nowhere in the Act of 1890 is the word " fine " used: always is the sanction referred to as a " penalty." In our opinion, " penalty " in this Act was intended to have the same meaning as " fine " as the latter expression is used in the Summary Jurisdiction Act, 1879. Confirmation for this view is to be found in s. 6 of the Act—" Offences . . . may be prosecuted . . . and penalties . . . recovered . . . under the Public Health Acts."

Therefore we think that the person against whom it is intended to proceed should be charged on an information with committing an offence (*see* Magistrates' Courts Act, 1952, s. 42).

7.—Rating and Valuation—*Act of* 1955—*Transitional restriction on recoverable amount.*

By s. 1 (7) of the Rating and Valuation (Miscellaneous Provisions) Act, 1955, if an increased value is given in the new list to a hereditament which has not been substantially altered since its value was last determined, and a proposal for reducing the value is made before the end of the year beginning with the coming into force of the list, then until that proposal is settled the amount recoverable in respect of rates levied on the hereditament must not exceed the amount levied for the last year before the list came into force.

The question arises whether this subsection is a bar to the recovery of rates in excess of those paid last year until after the end of the financial year, irrespective of whether a proposal to reduce an assessment is actually made or not.

Each ratepayer has a right until March 31, 1957, to submit a proposal, and many difficulties will arise if distress warrants are granted for sums based on the new assessments, and if the ratepayers submit proposals after the grant of such distress warrants but within the time limit.

Difficulty is arising too upon the true interpretation of the word " recoverable " in the subsection, and in this connexion I refer to the Poor Rate Act, 1801, s. 2, which provides that after notice of appeal and until it is determined no proceeding is to be carried on for the recovery of any greater sum than that at which the defendant or any occupier of the same premises was rated in the last effective rate collected in the parish.

I shall be glad of your observations on the above and your answers to the following questions based on the following examples:

Assume rate charge 1955–56—£40 (payable: £20 and £20).
" rate charge 1956–57—£90 (payable: £45 and £45).

If a proposal is lodged before summons applied for:

(*a*) For what amount should the summons be applied for?

If no proposal is lodged before summons applied for:

(*b*) For what amount should summons be applied for in the first half year?

If proposal lodged after hearing of summons and distress warrant granted:

(*c*) For what amount should distress warrant issue as the lodging of the proposal would appear to affect the right of recovery.

DIRATE.

Answer.

(*a*) On the figures given, for £40, in our opinion.
(*b*) £45.
(*c*) £40.

In case (*a*) and case (*b*) the ratepayer will, if his proposal succeeds, have discharged the whole of his liability for the rating year. If his proposal fails, there will be £5 arrears for the rating authority to claim in the second half year.

In case (*b*), if a proposal to retain the old value is lodged after distress for £45, and that proposal succeeds, the rating authority will refund £5. If the ratepayer does not lodge a proposal before the second half yearly instalment of £45 is due, that instalment if unpaid can be distrained for in due course. If he still lodges no proposal before March 31, 1957 (and this we take to be the point of the second paragraph of the query) all is well. If he then does lodge a proposal which succeeds, he will be entitled to a refund.

OFFICIAL AND CLASSIFIED ADVERTISEMENTS, ETC. (*contd*).

HOLLYWOOD MANOR BOYS' PROBATION HOME

RESIDENT Warden and Matron (Man and Wife) required. C. of E. Thirty residents ages 16 to 18 inclusive.

Salaries: Warden £490×£15—£550
Matron £370×£15—465

Payable for emoluments £113 each.

Exceptional opportunity for Christian service, training boys in gardening, agriculture, handicrafts, as well as character building. Applications giving fullest particulars of ages and experience, with references, to Mr. John L. Fleming, Secretary, 64, Burgate, Canterbury, Kent.

LINCOLNSHIRE COMBINED PROBATION AREA

Appointment of Probation Officers

APPLICATIONS are invited for the appointment of a full-time male Probation Officer and a full-time woman Probation Officer for the Lincoln district. The appointments and salaries will be subject to the provisions of the Probation Rules. The successful candidates will be required to pass a medical examination.

Applications should reach me not later than October 22, 1956, and should state date of birth, qualifications, experience in probation and similar work, present employment and salary, and the names of two referees.

H. COPLAND,
Secretary.

Lindsey County Offices,
Lincoln.

BOROUGH OF ASHTON-UNDER-LYNE
(Population 51,000)

Appointment of Deputy Town Clerk

APPLICATIONS are invited from Solicitors.

Salary—Grade A.P.T. VII

Applications, giving particulars of age, education, qualifications, present and past appointments and experience, and the names of not more than two referees, should be sent to the undersigned, endorsed "Deputy Town Clerk," to arrive not later than October 22, 1956.

The Council will be prepared, in a suitable case, to offer housing accommodation to the successful applicant.

G. A. MALONE,
Town Clerk.

Town Hall,
Ashton-under-Lyne

COUNTY BOROUGH OF WARRINGTON

Second Assistant Solicitor

APPLICATIONS are invited by October 19 for the above appointment within the N.J.C. Scale (£725×£35—£970) plus I.D.T. award of 2½ *per cent* according to experience and date of admission. Applicants should state age, qualifications, experience and names of two referees. Canvassing will disqualify.

J. P. ASPDEN,
Town Clerk.

Town Hall, Warrington.

KINGSTON UPON HULL CHILDREN'S COMMITTEE

Senior Child Care Officer (Female)

APPLICATIONS are invited for a post (officially designated Senior Social Worker) in the above Department. Candidates must have good professional qualifications. Salary—Grade III of A.P.T. Scales of N.J.C. (£460×£25—£765). Increments may be granted for previous experience.

Forms of application and particulars of the post may be obtained from the Children's Officer, Municipal Offices, George Street, Kingston upon Hull. Closing date for applications, October 31, 1956.

NORTH RIDING OF YORKSHIRE

Female Probation Officer

APPLICATIONS are invited for a full-time female Probation Officer for the Tees-side area of the North Riding and a rural area adjoining. Applicants, other than serving Probation Officers, must not be less than 23 or more than 40 years of age and be experienced in dealing with probation cases, matrimonial differences and other social work of the Courts. The appointment will be subject to the Probation Rules and be paid in accordance with those rules.

Applications, stating age, present position, qualifications and experience, together with the names of two referees, should reach the undersigned not later than October 27, 1956.

HUBERT G. THORNLEY,
Secretary to the Committee.

County Hall,
Northallerton.

COUNTY BOROUGH OF WALSALL

Assistant Solicitor (Male or Female)

APPLICATIONS are invited for the above appointment. Salary in accordance with Grades V–VI of the A.P.T. Division, *viz*:—£795—£1,080 per annum, plus the recent award of 2½ *per cent*. A commencing salary above the minimum may be paid.

Applications, accompanied by copies of three recent testimonials, should be sent to the undersigned not later than first post Monday, October 29, 1956.

Canvassing will disqualify. Relationship to any member or officer of the Council must be disclosed. Medical examination.

W. STALEY BROOKES,
Town Clerk.

The Council House,
Walsall.

MIDDLESEX MAGISTRATES' COURTS COMMITTEE

WHOLE-TIME Assistant to Clerk to Justices required for Brentford Division. Experience in keeping magisterial accounts, issuing process and general duties and competent to take a Court. Commencing salary £595 on scale £595×£20—£675 per annum, plus London Weighting. Pensionable and subject to medical assessment. Apply with copies of not more than three testimonials to The Clerk to the Magistrates' Courts Committee, Guildhall, Westminster, S.W.1, by October 22, 1956. (Quoting T.717 J.P.).

BOROUGH OF LUTON

Appointment of Fourth Assistant (Male) to the Clerk to the Justices

APPLICATIONS are invited for the above appointment; Salary Grade A, Senior Clerks' Division, (£595—£675). Candidates should have some knowledge of accountancy and book-keeping and will be required to assist in the general duties of a Magistrates' Clerks' Office. Shorthand and typewriting an advantage.

Joint Negotiating Committee's Scales and Conditions of Service apply.

Applications in own handwriting giving full particulars of present employment and previous experience together with the names of two referees, should reach me not later than October 20, 1956. Canvassing will disqualify.

R. P. TUNSTALL,
Clerk to the Magistrates' Courts Committee.

14 Upper George Street,
Luton.

CRAWLEY URBAN DISTRICT COUNCIL

Legal and General Assistant

APPLICATIONS are invited for the above appointment in the Clerk's Department at a salary in accordance with APT Grade III (£640—£765). A thorough knowledge of conveyancing is essential and applicants should have had general experience in a legal office.

The National Conditions of Service and the Local Government Superannuation Acts will apply to the appointment.

The Council will assist in the provision of housing accommodation if required.

Applications, stating age and experience, together with the names of two persons to whom reference can be made, should reach me not later than Monday, October 22, 1956.

Canvassing, directly or indirectly, will disqualify and candidates must disclose whether they are related to any member or senior officer of the Council.

R. W. J. TRIDGELL,
Clerk of the Council.

Robinson House,
Robinson Road,
Crawley, Sussex.

COUNTY BOROUGH OF SOUTH SHIELDS

Second Assistant Solicitor

APPLICATIONS are invited for this appointment from Solicitors or from November Finalists trained either in the Local Government Service or in private practice. Salary within the scale £725—£970 per annum.

The post is superannuable subject to the passing of a medical examination. Canvassing will disqualify and applicants must disclose in writing any relationship to members or chief officers of the Council.

Applications giving details of qualifications and experience should reach me by Monday, October 22, 1956.

R. S. YOUNG,
Town Clerk.

Town Hall,
South Shields.